

1 DISTRICT JUDGE MARSHA J. PECHMAN
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 JAMALL S BAKER,

10 Plaintiff,

NO. 2:21-cv-00361-MJP

11 v.

PROPOSED STIPULATED
PROTECTIVE ORDER

12 O'REILLY et al.,

13 Defendants.

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15 1. PURPOSES AND LIMITATIONS

16 Discovery in this action is likely to involve production of confidential, proprietary, or
17 private information for which special protection may be warranted. Accordingly, the parties
18 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
19 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
20 protection on all disclosures or responses to discovery, the protection it affords from public
21 disclosure and use extends only to the limited information or items that are entitled to
22 confidential treatment under the applicable legal principles, and it does not presumptively entitle
23 parties to file confidential information under seal.

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1 2. CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
 3 produced or otherwise exchanged: plaintiff’s medical records.

4 3. “CONFIDENTIAL ATTORNEYS’ EYES ONLY “MATERIAL

5 “Confidential Attorneys’ Eyes Only” material shall include the following documents and
 6 tangible things produced or otherwise exchanged: records concerning the safety and security
 7 measures at any jail, prison, or other correctional facility, including the Monroe Correctional
 8 Complex and the Sky River Treatment Center (f/k/a Special Offenders Unit).

9 4. SCOPE

10 The protections conferred by this agreement cover not only confidential material and
 11 confidential attorneys’ eyes only material (as defined above), but also (1) any information
 12 copied or extracted from confidential material or confidential attorneys’ eyes only material ; (2)
 13 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
 14 conversations, or presentations by parties or their counsel that might reveal confidential material
 15 or confidential attorneys’ eyes only material.

16 However, the protections conferred by this agreement do not cover information that is in
 17 the public domain or becomes part of the public domain through trial or otherwise.

18 5. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL AND CONFIDENTIAL
 19 ATTORNEYS’ EYES ONLY MATERIAL

20 5.1 Basic Principles. A receiving party may use confidential or confidential
 21 attorneys’ eyes only material that is disclosed or produced by another party or by a non-party in
 22 connection with this case only for prosecuting, defending, or attempting to settle this litigation.
 23 Confidential material may be disclosed only to the categories of persons and under the conditions
 24 described in this agreement. Confidential and confidential attorneys’ eyes only material must be
 25 stored and maintained by a receiving party’s attorney at a location and in a secure manner that
 26 ensures that access is limited to the persons authorized under this agreement.

1 5.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
 2 ordered by the court or permitted in writing by the designating party, a receiving party may
 3 disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well as employees
 5 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

6 (b) the officers, directors, and employees (including in house counsel) of the
 7 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
 8 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
 9 designated;

10 (c) experts and consultants to whom disclosure is reasonably necessary for
 11 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 12 A);

13 (d) the court, court personnel, and court reporters and their staff;

14 (e) copy or imaging services retained by counsel to assist in the duplication
 15 of confidential material, provided that counsel for the party retaining the copy or imaging service
 16 instructs the service not to disclose any confidential material to third parties and to immediately
 17 return all originals and copies of any confidential material;

18 (f) during their depositions, witnesses in the action to whom disclosure is
 19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
 20 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
 21 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
 22 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
 23 under this agreement;

24 (g) the author or recipient of a document containing the information or a
 25 custodian or other person who otherwise possessed or knew the information.

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1 5.3 Disclosure of “CONFIDENTIAL ATTORNEYS’ EYES ONLY” Information or
 2 Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a
 3 receiving party’s counsel of record **MAY NOT DISCLOSE CONFIDENTIAL**
 4 **ATTORNEYS” EYES ONLY INFORMATION TO THE PLAINTIFF.** A receiving party’s
 5 attorney may disclose any confidential attorneys’ eyes only material only to:

6 (a) employees of counsel to whom it is reasonably necessary to disclose the
 7 information for this litigation;

8 (b) experts and consultants to whom disclosure is reasonably necessary for
 9 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 10 A);

11 (c) the court, court personnel, and court reporters and their staff;

12 (d) copy or imaging services retained by counsel to assist in the duplication
 13 of confidential material, provided that counsel for the party retaining the copy or imaging service
 14 instructs the service not to disclose any confidential material to third parties and to immediately
 15 return all originals and copies of any confidential material;

16 (e) during their depositions, non-incarcerated witnesses in the action to whom
 17 disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement
 18 to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the
 19 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
 20 confidential attorneys’ eyes only material must be separately bound by the court reporter and
 21 may not be disclosed to anyone except as permitted under this agreement;

22 (f) with the exception of Plaintiff, the author or recipient of a document
 23 containing the information or a custodian or other person who otherwise possessed or knew the
 24 information.

25 5.4 Filing Confidential or Confidential Attorneys’ Eyes Only Material. Before filing
 26 confidential or confidential attorneys’ eyes only material or discussing or referencing such

1 material in court filings, the filing party shall confer with the designating party, in accordance
 2 with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the
 3 confidential designation, whether the document can be redacted, or whether a motion to seal or
 4 stipulation and proposed order is warranted. During the meet and confer process, the designating
 5 party must identify the basis for sealing the specific confidential information or confidential
 6 attorneys' eyes only at issue, and the filing party shall include this basis in its motion to seal,
 7 along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the
 8 procedures that must be followed and the standards that will be applied when a party seeks
 9 permission from the court to file material under seal. A party who seeks to maintain the
 10 confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B),
 11 even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result
 12 in the motion to seal being denied, in accordance with the strong presumption of public access
 13 to the Court's files.

14 6. DESIGNATING PROTECTED MATERIAL

15 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
 16 or non-party that designates information or items for protection under this agreement must take
 17 care to limit any such designation to specific material that qualifies under the appropriate
 18 standards. The designating party must designate for protection only those parts of material,
 19 documents, items, or oral or written communications that qualify, so that other portions of the
 20 material, documents, items, or communications for which protection is not warranted are not
 21 swept unjustifiably within the ambit of this agreement.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 23 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 24 unnecessarily encumber or delay the case development process or to impose unnecessary
 25 expenses and burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it designated
 2 for protection do not qualify for protection, the designating party must promptly notify all
 3 other parties that it is withdrawing the mistaken designation.

4 6.2 Manner and Timing of Designations. Except as otherwise provided in this
 5 agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as otherwise stipulated or
 6 ordered, disclosure or discovery material that qualifies for protection under this agreement must
 7 be clearly so designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (*e.g.*, paper or electronic documents
 9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
 10 proceedings), the designating party must affix the word "CONFIDENTIAL" or
 11 "CONFIDENTIAL ATTORNEYS' EYES ONLY" to each page that contains that type of
 12 material. If only a portion or portions of the material on a page qualifies for protection, the
 13 producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate
 14 markings in the margins).

15 (b) Testimony given in deposition or in other pretrial proceedings: the parties
 16 and any participating non-parties must identify on the record, during the deposition or other
 17 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
 18 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
 19 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
 20 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
 21 confidential information at trial, the issue should be addressed during the pre-trial conference.

22 (c) Other tangible items: the producing party must affix in a prominent place
 23 on the exterior of the container or containers in which the information or item is stored the words
 24 "CONFIDENTIAL" or "CONFIDENTIAL ATTORNEYS' EYES ONLY." If only a portion or
 25 portions of the information or item warrant protection, the producing party, to the extent
 26 practicable, shall identify the protected portion(s).

1 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 2 designate qualified information or items does not, standing alone, waive the designating party's
 3 right to secure protection under this agreement for such material. Upon timely correction of a
 4 designation, the receiving party must make reasonable efforts to ensure that the material is
 5 treated in accordance with the provisions of this agreement.

6 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 7.1 Timing of Challenges. Any party or non-party may challenge a designation of
 8 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
 9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 10 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
 11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 12 original designation is disclosed.

13 7.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 14 regarding confidential designations without court involvement. Any motion regarding
 15 confidential designations or for a protective order must include a certification, in the motion or
 16 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 17 conference with other affected parties in an effort to resolve the dispute without court action.
 18 The certification must list the date, manner, and participants to the conference. A good faith
 19 effort to confer requires a face-to-face meeting or a telephone conference.

20 7.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 21 intervention, the designating party may file and serve a motion to retain confidentiality under
 22 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 23 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 24 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 25 other parties) may expose the challenging party to sanctions. All parties shall continue to
 26 maintain the material in question as confidential until the court rules on the challenge.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
 4 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
 5 “CONFIDENTIAL ATTORNEYS’ EYES ONLY” that party must:

6 (a) promptly notify the designating party in writing and include a copy of the
 7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to
 9 issue in the other litigation that some or all of the material covered by the subpoena or order is
 10 subject to this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued
 12 by the designating party whose confidential or confidential attorneys’ eyes only material may be
 13 affected.

14 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
 16 or confidential attorneys’ eyes only material to any person or in any circumstance not authorized
 17 under this agreement, the receiving party must immediately (a) notify in writing the designating
 18 party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies
 19 of the protected material, (c) inform the person or persons to whom unauthorized disclosures
 20 were made of all the terms of this agreement, and (d) request that such person or persons execute
 21 the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

22 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
 23 MATERIAL

24 When a producing party gives notice to receiving parties that certain inadvertently
 25 produced material is subject to a claim of privilege or other protection, the obligations of the
 26 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This

1 provision is not intended to modify whatever procedure may be established in an e-discovery
 2 order or agreement that provides for production without prior privilege review. The parties agree
 3 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

4 11. NON TERMINATION AND RETURN OF DOCUMENTS

5 Within 60 days after the termination of this action, including all appeals, each receiving
 6 party must return all confidential and confidential attorneys' eyes only material to the producing
 7 party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree
 8 upon appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
 10 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
 11 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
 12 work product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a
 14 designating party agrees otherwise in writing or a court orders otherwise.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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 17 DATED: October 8, 2024

s/ Tania Sethi Kamjula

Tania Sethi Kamjula, WSBA # 61732
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Attorneys for Plaintiff Jamall S. Baker

22
 23 DATED: October 8, 2024

s/ Aaron Williams

Aaron Williams, WSBA# 46044
 Assistant Attorney General
 Corrections Division
 PO Box 40116
 Olympia, WA 98504-0116
Attorney for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents, electronically stored information (ESI) or information, whether inadvertent or
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal
5 or state proceeding, constitute a waiver by the producing party of any privilege applicable to
6 those documents, including the attorney-client privilege, attorney work-product protection, or
7 any other privilege or protection recognized by law. This Order shall be interpreted to provide
8 the maximum protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid.
9 502(b) do not apply. Nothing contained herein is intended to or shall serve to limit a party's
10 right to conduct a review of documents, ESI or information (including metadata) for relevance,
11 responsiveness and/or segregation of privileged and/or protected information before production.
12 Information produced in discovery that is protected as privileged or work product shall be
13 immediately returned to the producing party.

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15 DATED: October 9, 2024

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19 MARSHA J. PECHMAN
20 United States Senior District Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on _____ [date] in the case of _____ *Baker v. O'Reilly, et al.*, Case No. 2:21-cv-00361-MJP. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name:

Signature: